

1 COURT OF COMMON PLEAS

2 HAMILTON COUNTY, OHIO

3
4 STATE OF OHIO,

:

5 Plaintiff,

:

6 vs.

Case No. B-980752

7 FREDRICK HALL,

:

8 Defendant,

:

10
11 TRANSCRIPT OF OPENING STATEMENTS

12
13 APPEARANCES:

14 WILLIAM ANDERSON, ESQ.

15 On behalf of the Plaintiff

16 ELIZABETH ZUCKER, ESQ.,

and

17 JAMES RADER, ESQ.

On behalf of the Defendant

18
19
20 BE IT REMEMBERED that upon the hearing of
21 this matter, on the dates hereinafter indicated, before
22 the Honorable STEVEN E. MARTIN, one of the judges of the
23 said Court of Common Pleas, the following proceedings were
24 had, to wit:
25

1 Proceedings, April 27, 1999

2 MR. ANDERSON: Thank you, Your Honor.

3 May it please the Court, defense counsel,
4 ladies and gentlemen of the jury, the evidence in
5 this case will show that on October 17th of 1998,
6 this defendant, Fredrick Hall, took a .380
7 caliber handgun and shot two individuals with it.
8 Shot Kevin Davis, and he shot Johann Hart at 3:15
9 in the morning on Windsor Avenue.

10 The evidence will show that Mr. Davis and
11 Mr. Hart were out on the street in the early
12 morning hours that morning; Mr. Davis had crack
13 cocaine on him -- they were probably out there
14 dealing, making their deals -- and this defendant
15 was operating a car and pulled up and motioned
16 them to come over and began to engage in what they
17 believe to be a drug transaction. He wanted to
18 buy some crack cocaine.

19 At that point, he pulled out a handgun
20 and he shot Kevin Davis in the right shoulder with
21 that .380 caliber handgun. He shot Johann Hart
22 twice; he shot him in the neck and he shot him in
23 the back.

24 After Fredrick Hall fired that gun and
25 hit those two individuals, he took off in his car.

1 A description of the car he was driving was made.

2 The license plates were obtained from the car he
3 was driving, and the police put out a broadcast to
4 be on the lookout for a car with a certain license
5 plate number and they gave a general area where
6 that car had last been seen.

7 You will hear testimony from Officer
8 Bailey that he observed that car driven by this
9 defendant. And when this defendant became aware
10 that Officer Bailey had spotted him, he took off
11 at a high rate of speed going 60 to 70 miles an
12 hour down Gilbert Avenue through Eden Park, and
13 things of that nature.

14 Officer Bailey lost the car momentarily.
15 However, other officers were around. The police
16 found the car parked on Windsor Avenue. It's
17 registered to the defendant's wife. And as the
18 police were searching around the area of that
19 vehicle, they found this defendant, Fredrick Hall,
20 hiding in the bushes, attempting to escape
21 capture.

22 You'll hear testimony from both Kevin
23 Davis and Johann Hart that that's the individual
24 that had the gun that night, that that's the
25 individual that fired the shots.

When the police did a crime scene, they found two spent shell casings in the area where these gentlemen were shot. They were kind of kicked to the curb. They recovered those two shell casings. They also recovered one shell casing, a spent shell casing from a .380 caliber handgun from the car being driven by the defendant.

They sent them to the lab and it came back that the two shell casings at the scene had not been fired from the same gun as the shell casings recovered from the defendant's car.

None of the bullets were recovered from the defendant's -- or from the victims because they were shot and the bullets went through them, so they didn't recover any of those, and the gun was gone -- or the police did not recover the gun.

When this defendant, Fredrick Hall, was apprehended by the police, the police advised him of his Miranda Rights and they started asking questions. Mr. Hall told the police that he was out buying shaving cream at 3:15 in the morning. He told them that over a period of about an hour or two. He just said, "Hey, I don't know what you're talking about. I know nothing about a

1 shooting. I was out buying shaving cream."

2 The police took Fredrick Hall back to the
3 police station where they once again advised him
4 of his rights and they talked a little bit more.
5 And when the police got him back to the police
6 station, his story changed a little bit.

7 At the police station when he was
8 interviewed, the defendant stated that he picked
9 up somebody named Dave and they went down to 14th
10 and Republic. Then he said that the two people
11 who were shot that night, Kevin Davis and Johann
12 Hart, had robbed him two weeks before. And, he,
13 in fact, had been shot a week or two before. He's
14 got the sling on the medical record that he was,
15 in fact, shot. Told the police that these two
16 individuals were the ones that had robbed him and
17 shot him.

18 He indicated that he called -- he called
19 one over to the car, and at that point Dave began
20 to shoot. Dave was in the passenger seat next to
21 him. After Dave shot these two individuals, they
22 took off south on Republic Street. He dropped
23 Dave off somewhere and told them to hide the gun.

24 A little later the story changed a little
25 bit. A little later Mr. Hall stated that, in

1 fact, Dave was in the back seat behind him and
2 then he fired the shots, and then he stated to
3 tell the police that he would take them to where
4 the gun was located.

5 So the police took him up to Windsor
6 Avenue in an attempt to look for the gun, and they
7 were unsuccessful in finding the gun. They looked
8 for approximately 45 minutes, and then the
9 defendant stated, "Well, the gun is not here."

10 He indicated that these two individuals
11 had robbed him, shot him and they had taken a
12 watch from him.

13 Ladies and gentlemen, this is a
14 multi-count indictment. There are, in fact, seven
15 separate counts in this indictment. And I hate to
16 belabor the point, but I think I need to read this
17 to you because as with any indictment it contains
18 essential elements of the offenses that the State
19 of Ohio has a burden of proving.

20 Judge Martin will indicate to you in his
21 instruction that an indictment is only a piece of
22 paper and it is not evidence, however, it does
23 contain the elements of the State of Ohio is
24 required to prove.

25 MR. RADER: Your Honor, I object to the

1 reading of the indictment.

2 THE COURT: Overruled.

3 MR. ANDERSON: Count Number One: On or
4 about October 17, 1999, in Hamilton County, State
5 of Ohio, this defendant, Fredrick Hall, knowingly
6 caused or attempted to cause physical harm to
7 Kevin Davis by means of a deadly weapon or
8 dangerous ordinance; that would be a firearm.

9 Each one of the first six counts carries
10 with it three separate specifications.

11 And I'm going to read regarding Count One
12 and then I'm going to just refer to it on the
13 additional counts.

14 Specification One to Count One: That the
15 defendant, Fredrick Hall, had on or about his
16 person or under his control a firearm while
17 committing the offense of felonious assault.

18 Specification Two: The defendant,
19 Fredrick Hall, had on or about his person or under
20 his control a firearm while committing or
21 attempting to commit the offense of felonious
22 assault and displayed the firearm, brandished the
23 firearm, indicated he possessed the firearm, or,
24 he used it to facilitate the offense.

25 Specification Three: The defendant,

1 Fredrick Hall, while committing the offense of
2 felonious assault, purposely or knowingly caused
3 or attempted to cause death or physical harm to
4 another by discharging a firearm from a motor
5 vehicle.

6 Those three specifications entail every
7 one of these counts in the indictment except for
8 Count Seven.

9 Count Two also occurred on or about
10 October 17, 1998, in Hamilton County, State of
11 Ohio.

12 On that date, this defendant, Fredrick
13 Hall, knowingly caused serious physical harm to
14 Kevin Davis. Again, the three specifications.

15 Third Count: On or about October 17,
16 1998, in Hamilton County, State of Ohio, that
17 defendant, Fredrick Hall, knowingly caused or
18 attempted to cause physical harm to Johann Hart by
19 means of a deadly weapon or dangerous ordinance.

20 Again, this is by use of a firearm.

21 Count Four: Same date, October 17, 1998,
22 Hamilton County, State of Ohio, that defendant
23 Fredrick Hall, knowingly caused serious physical
24 harm to Johann Hart.

25 Count Five: October 17, 1998, Hamilton

1 County, State of Ohio, that defendant, Fredrick
2 Hall, knowingly engaged in conduct, which if
3 successful would have constituted or resulted in
4 the offense of murder.

5 Count Six: On or about October 17, 1998,
6 in Hamilton County, State of Ohio, that defendant,
7 Fredrick Hall, knowingly engaged in conduct which
8 if successful would have constituted or resulted
9 in the offense of murder.

10 And, again, all of those contain three
11 separate specifications concerning a gun.

12 The final and Seventh Count: On or about
13 October 17, 1998, in Hamilton County, State of
14 Ohio, that defendant, Fredrick Hall, willfully
15 operated motor vehicle so as to allude or flee a
16 police officer after receiving a visible or
17 audible signal from a police officer telling him
18 to bring his motor vehicle to a stop. And in
19 committing such offense, the defendant was fleeing
20 immediately after the commission of a felony.

21 Those are the essential elements of the
22 offenses that Fredrick Hall is charged with.

23 Ladies and gentlemen, listen carefully to
24 the evidence. Listen to what the witnesses have
25 to say. Use the test of credibility that you use

1 in your everyday life. Determine the facts that
2 you find in this case and apply the law as Judge
3 Martin gives it to you and arrive at a true and a
4 just verdict.

5 At the conclusion of this case, the State
6 of Ohio will be asking you to return a true and
7 just verdict; a verdict of guilty as charged
8 against Fredrick Hall to four counts of felonious
9 assault, two counts of attempted murder, and one
10 count of fleeing or alluding police officer.

11 THE COURT: Mr. Rader.

12 MR. RADER: Ladies and gentlemen, opening
13 statement, as every other part of the trial, has a
14 reason.

15 My perception of that reason is that His
16 Honor, the Judge, has not heard the evidence in
17 this case. And throughout this case, he will make
18 rulings on evidence, what evidence is relevant,
19 what evidence is material. He cannot perform that
20 function without having some overview of what the
21 theory of this case is or what this case is about.

22 Now, I objected to a reading of the
23 indictment because if you hear accusations over
24 and over and over again, maybe they take on some
25 credibility.

1 But my purpose in being here and what I'm
2 trying to convey to you is an overall glance of
3 this case, really, technically, for the benefit of
4 the judge who will make evidentiary rulings about
5 what is permissible.. And that's not in the form
6 of evidence, but it serves you in very much the
7 same function, in that if you have an overview,
8 there are parts of this that will be irrelevant
9 and more pertinent to your thinking than other
10 parts. And you can say, I want to see whatever,
11 whatever, as the case unfolds.

12 But the facts in this case and the
13 evidence in this case will show you that this case
14 essentially involves children. I mean, it's -- at
15 least all except the lady here in the blue jean
16 jacket. She is probably the youngest, I think.

17 Kevin Davis, I understand, is 16-years
18 old. Excuse me. That's wrong. Johann Hart is
19 16-years old and Kevin Davis is 19.

20 The evidence in this case will show that
21 those these are kids that absolutely run-amuck,
22 that Johann is out wrecking cars. And Kevin is,
23 when the lifesquad picked him up, a block or
24 several blocks away, he had crack cocaine taped to
25 his arm.

1 Come to your own conclusions about why,
2 if it's just for sale or for his own use, or, it's
3 not material to me.

4 But this will be in evidence that he had
5 this crack cocaine taped to his arm.

6 19-years old. Johann Hart went to Taft
7 High School for a time and has dropped out at
8 16-years old, buying cars. I assume he's buying
9 them with, I believe --

10 MR. ANDERSON: Objection.

11 MR. RADER: The evidence will show --

12 THE COURT: You can't assume, but you can
13 tell us what you believe the evidence will show.

14 MR. RADER: The evidence will show that
15 he's buying automobiles, etc., at a very young and
16 tender age with money from dealers.

17 People these days have a -- are having a
18 lot of trouble with their children, especially in
19 the black community.

20 The evidence in this case will show that
21 Fredrick Hall has a son, as well. He's about
22 16-years old.

23 The evidence in this case will show that
24 my friend, the prosecutor, said that this happened
25 on Windsor, if you recall. It didn't. It

1 happened at 1330 Republic, which is just off
2 Central Parkway. And 911 calls started at 3:18 in
3 the morning.

4 And the evidence is this case will show
5 you that sound recordings and computer printouts
6 of that material will show you that for about an
7 hour the police reports were of a gray automobile
8 -- which is not the color of Mr. Hall's wife's car
9 -- with three people in the automobile, and the
10 automobile being driven by an approximately
11 20-year old, light complected for a black man,
12 clean shaven, wearing a baseball cap -- and did I
13 say a white t-shirt? Two other people in the
14 vehicle.

15 Now, this was the broadcast for about an
16 hour. No doubt somebody saw this vehicle on
17 Republic Street because the license number was out
18 in less than three minutes.

19 Two witnesses that we have tried
20 diligently to find, that are listed on this
21 computer information, etc., that we have not --
22 we have subpoenaed and they have not responded --
23 apparently these two eyewitnesses are the
24 witnesses that on the scene gave their information
25 to the police that the shooting was done by a

1 20-year old, clean-shaven black male wearing a
2 white t-shirt and a baseball cap.

3 This car was found sometime later on
4 Windsor Avenue, and no one was there, just the car
5 sitting parked.

6 Let me back up and say that to get from
7 Republic to Windsor, the logical path is up
8 Gilbert Avenue. And I know from researching and
9 studying this case, that a police officer is going
10 to come in, and he's going to tell you that he was
11 sitting on the left side of Gilbert Avenue and saw
12 a car come up the street, looked at that driver at
13 night -- this is 3:30, 3:45 in the morning --
14 looked at that driver closely enough to get a
15 positive identification of that driver as the car
16 went by at a normal speed. When the car went
17 past, he recognized the license number and took
18 off after the car.

19 Now, I don't know what he was driving, a
20 Suburban, or whatever he was driving, but he was
21 unable to catch this foreign Japanese car.

22 Ladies and gentlemen, the evidence in
23 this case is going to show that this
24 identification is not probable. It's not likely.
25 It's not reasonable. And one of the things that

leads to that conclusion is that Mr. Hall has
essentially one functioning arm. A bone in his
arm is severed from his elbow. There's two bones
in your lower arm, and one of those arms is
severed. And if you can believe that he can drive
a stick shift, five-speed stick shift automobile
through a 70 or 80 mile-an-hour chase with the
police and shift that car and steer that car with
one arm, it's very improbable.

The evidence in this case will show that
it is highly improbable, highly.

MR. ANDERSON: Objection. All this
language is certainly argumentative.

THE COURT: Sustained.

MR. RADER: The evidence in this case
will show that this car went through the alley or
through Republic Street and somebody fired a gun
driving the car.

The evidence will show you that it's
highly improbable or impossible --

MR. ANDERSON: Judge, again, I'm going to
argue to "improbable" and "impossible."

THE COURT: You can't use those phrases
"probable," "unlikely." Just what you believe the
evidence will show.

1 MR. RADER: I understand, Your Honor.

2 Thank you.

3 The evidence in this case will show that
4 Mr. Hall was concerned about his son. Evidence
5 will show the police took the son into custody
6 and took him to juvenile court. The evidence will
7 show that they kept him there until about 7
8 o'clock in the morning. The evidence will show
9 you Mr. Hall's concern, his concern with his
10 wife's car being seized and her not having
11 transportation for work. The evidence will show
12 that he has concern for protecting his son.

13 The evidence will show that the police
14 attribute certain statements to him. And the
15 evidence will show that -- their testimony will
16 show that they attribute these statements to a
17 voluntary response.

18 Ladies and gentlemen, the evidence will
19 also show that at 6:15 in the morning, Mr. Hall
20 refused to sign a Waiver of Rights. He refused to
21 sign his rights away, his right to a lawyer, his
22 right to remain silent.

23 The evidence will show that these are
24 alleged to be voluntary statements, yet they're
25 not in writing. And they're voluntary statements

1 made by a man who wouldn't acknowledge those
2 statements on a written waiver. The evidence will
3 show that Mr. Hall was at home and his son wasn't
4 there.

5 MR. ANDERSON: Judge, I'm going on
6 object.

7 THE COURT: Sustained.

8 MR. RADER: May we approach the bench,
9 Your Honor?

10 THE COURT: Sure.

11 (Sidebar discussion as follows:)

12 MR. RADER: Your Honor, I'm not
13 contesting where he was at the time. I'm saying
14 it's 3:40 or something --

15 THE COURT: Well, you have to say at
16 3:40. You can't just say the way you said it was.

17 MR. RADER: You'll find out. The
18 evidence will show he was at home.

19 THE COURT: You can't leave it like that.

20 (Ends sidebar discussion.)

21 THE COURT: Ladies and gentlemen, they'll
22 be various times during this case where we'll take
23 breaks. Some of the breaks are important, some
24 aren't. Don't read anything into them,
25 whatsoever. It's just a normal part of the trial

1 Go ahead.

2
3 MR. RADER: Evidence in this case will
4 show that Fredrick Hall came home. His father
5 asked him where the car was. He said, "The car is
6 over on Windsor. I think I'm in trouble. I think
the police are following me."

7 And his father really out of confusion or
8 concern or whatever went over there and saw lots
9 of police, didn't know what to think of -- what
10 was going on. Didn't know what was going on and
11 did not walk right up to -- they came over and
12 questioned him and took him into custody, and he's
13 been in custody since.

14 The evidence will show in this case that
15 the statements he made are not the statements that
16 he -- that are attributed to him by the police.
17 And the evidence will be such that the prosecutor
18 will make a big thing out of this, as was the case
19 in opening statement, of him saying, "I went to
20 get shaving cream."

21 Let me tell you, if a police questioned
22 you from 4 o'clock in the morning until mid day
23 the next day, you're going to get disgusted and
24 you're going to get aggravated and you're going to
25 say, "Okay, I was out getting shaving cream."

1 That's not relevant or material to the
2 issues in this case.

3 But, ladies and gentlemen, I'm giving you
4 an overview of what this case is about. It's not
5 evidence. It's not evidence, but I hope I pointed
6 out to you some of the things that should be paid
7 particular attention to.

8 We leave it with you. Thank you very
9 much.

10 THE COURT: All right.

11 Ladies and gentlemen, at this time we're
12 going to break until tomorrow. We'll begin
13 hopefully, probably, at 10 o'clock with testimony.

14 Tomorrow, I expect us to go to between
15 4:00 and 4:30. There's another matter that's come
16 up that I have to attend to that's absolutely
17 unrelated to that this afternoon. So the same
18 admonitions apply as I gave you earlier.

19 Don't discuss this case amongst
20 yourselves or with anyone else, or permit anyone
21 to discuss it in your presence. Don't come to any
22 conclusions based on anything you see or hear.
23 You've not heard one bit of evidence, so don't
24 come to any conclusion based on anything you've
25 seen. And don't attempt to do any independent

1 investigation to prove or disprove any facts that
2 you may have heard in this case. And if you do
3 come across any media accounts of this case, which
4 I strongly doubt you will, but if you do,
5 disregard them in their totality.

6 With that, we'll break until tomorrow at
7 2:50.

8 Be back in the jury room by five till
9 10:00 tomorrow and we'll get you as soon as after
10 10:00 as we can.

11 - - -
12 PROCEEDINGS ADJOURNED IN PROGRESS
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1 C E R T I F I C A T E
23 I, Cheryl Dillard, RPR, the undersigned, an
4 official court reporter for the Court of Common Pleas, do
5 hereby certify that Pages 1-20 constitute a true
6 transcription of my notes, taken in stenotypy, of the
7 proceedings in this cause.8 IN WITNESS WHEREOF, I have hereunto set my hand
9 at Cincinnati, Ohio, this 26th day of July, 1999.10 
11 Cheryl Dillard
12 CHERYL DILLARD
13 OFFICIAL COURT REPORTER
14 COURT OF COMMON PLEAS
15 HAMILTON COUNTY, OHIO
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